

**Sportsman's Service Center and Sherry Woolford.**  
Case 5-CA-23714

April 28, 1995

**DECISION AND ORDER**

BY MEMBERS STEPHENS, COHEN, AND  
TRUESDALE

On December 30, 1994, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Sportsman's Service Center, Chester, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Offer Sherry Woolford immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision."

2. In paragraph 2(d) insert footnote reference 3 after the word "Appendix" and add the following as footnote 3.

<sup>3</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>1</sup>The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Ronald Broun, Esq.*, for the General Counsel.  
*Matthew W. Oakey, Esq. (Gallagher, Evelius & Jones)*, of  
Baltimore, Maryland, for the Respondent.

**DECISION**

STEPHEN J. GROSS, Administrative Law Judge. The Respondent, Sportsman's Service Center (Sportsman's or the store), is a store in Chester, Maryland. It is owned by Rena and Roger Dye (wife and husband). Sportsman's sells hunting and fishing supplies. The Charging Party, Sherry Woolford, previously was an employee of Sportsman's. Sportsman's fired her on May 28, 1993.

The General Counsel contends that Sportsman's fired Woolford because she called the National Labor Relations Board's Regional Office in Baltimore to complain of the Dyes' treatment of the store's employees and that, by Sportsman's so doing, it violated Section 8(a)(1) and (4) of the National Labor Relations Act (the Act).<sup>1</sup> Sportsman's denies that it violated the Act in any respect and argues that the Dyes fired Woolford solely because of Woolford's unacceptable performance and behavior as an employee.

My conclusion is that: (1) Sportsman's had ample lawful reasons to terminate Woolford's employment; but (2) Sportsman's would not have fired Woolford when it did but for Woolford's telephone call to the Board; (3) Sportsman's accordingly violated Section 8(a)(1) and (4) of the Act.

**I. WOOLFORD'S RECORD AS AN EMPLOYEE**

Sportsman's first hired Woolford, as a part-time cashier, in 1987. Woolford chose to end her employment in July 1988. But 2 months later Rena Dye urged Woolford to return to Sportsman's. Woolford did and remained employed as a cashier by Sportsman's until the Dyes fired her on May 28, 1993. (I will sometimes refer to Rena Dye as Rena and Roger Dye as Roger.) Until about the start 1992, the Dyes considered Woolford to be at least satisfactory as an employee. But that began to change in February 1992.

It was that February that Sportsman's became computerized, with the store's cash registers tied directly to a computer. The Dyes chose one of Woolford's fellow cashiers, Amy Williams, to be the computer operator. As a result Williams began working "upstairs"—in the store's office.

Woolford did not like Williams and considered herself to be a more able employee than Williams. Accordingly Woolford was upset that the Dyes had chosen Williams for the computer operator position. Worse yet, from Woolford's vantage point, was that: the computerization of the store meant that the cashiers had to learn a new set of procedures; it was Williams from whom the cashiers had to learn the new procedures; and it was Williams who corrected the cashiers when they made mistakes in ringing up sales.

Woolford responded to these circumstances by occasionally ignoring the new cashier procedures, by blaming any computer problems on Williams' mistakes, and by talking to the store's other employees about what an awful person Wil-

<sup>1</sup>Woolford filed her unfair labor practice charge on July 16, 1993. The complaint issued on August 17, 1993. I held a hearing in the matter in Annapolis, Maryland, on July 27 and 28, 1994. The General Counsel and Sportsman's have filed briefs. Sportsman's admits that its revenues exceed \$500,000 per year and that during the 12 months preceding the issuance of the complaint Sportsman's purchased goods valued in excess of \$5000 directly from points located outside the State of Maryland. I accordingly find and conclude that Sportsman's is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

liams was. Woolford continued this behavior throughout her employment with Sportsman's.

On Williams' part, she appears to be the kind of person who is on the lookout for insults, often seeing one when none was intended. Williams thus believed that all of Woolford's failures to follow the store's cashier procedures were deliberate efforts by Woolford to make life difficult for Williams. And whenever Williams saw Woolford huddled in conversation with another employee, Williams saw that as Woolford gossiping nastily about Williams (which, some of the time, it was).

Rena Dye handles all of the store's administrative work and supervises the cashiers. As it happens, Rena had a closer relationship with Williams than with she had Woolford, if only because Williams worked in the store's office, where Rena spent much of her time. Indeed, Williams' desk is next to Rena's. Williams enrolled Rena into viewing Woolford the way Williams did. Thus Rena began to see Woolford as a kind of provocateur, deliberately making cash register errors and fomenting morale problems among the other employees.

Later in 1992, Sportsman's "floor manager," Marty Barkley, reported that he had noticed Woolford putting customers' money in a cash register after hitting the "no sale" button. That led Rena to conclude that Woolford might be engaged in petty thievery (a conclusion that Rena might have been more reluctant to reach but for the mindset about Woolford that Rena had developed by that point). But there was no easy way to prove that Woolford was taking money that belonged to the store. Further, in other respects, Woolford performed competently. Most notably, her relationship with customers was excellent. Additionally, the town in which Sportsman's is located, Chester, is a small one. Everyone knows everyone, and the Dyes' children go to school with Woolford's. Even more importantly, Woolford's husband, Fritz, had long been an excellent customer of Sportsman's and a friend of the Dyes. As a result, no thought was given to discharging Woolford.

Meanwhile Woolford was becoming increasingly irritated with the Dyes, because, among other things, the Dyes (as Woolford saw it) were giving preferential treatment to other employees (including Williams).

In February 1993 the store's business plummeted. (February is always a bad month for Sportsman's; but February 1993 was worse than usual.) Layoffs were called for. Rena Dye wanted to use the occasion to terminate Woolford's employment because of what she believed to be Woolford's deliberate failures to follow procedures, because of Woolford's denigration of Williams, the store, and the Dyes in whispered conversations with other employees, and because of the possibility of Woolford's thievery. But Roger Dye, focusing on the impact that the firing of Woolford would have on the Dyes' relationship with Fritz, argued in favor of retaining Woolford as an employee. Roger won; Woolford stayed on.

The downturn in business led the Dyes to sharply reduce the hours worked by each of the employees and, therefore, each employee's income. Because of that, and because by this time Woolford took as a personal affront any action by the Dyes that adversely affected her, Woolford became increasingly angry and vocal about the way Rena Dye scheduled Woolford's hours. (The schedule affected each employee's total hours worked, the times of the day worked, and

the days of the week worked.) Woolford sounded off not just to Rena and the other employees, but also to a few of Sportsman's regular customers who stopped in virtually every morning for coffee and conversation and whom Woolford had gotten to know well. As one of the customers who testified put it, Woolford became "obsessed" about the way Sportsman's scheduled her. Inevitably, at least one of the customers on the receiving end of Woolford's complaints about Sportsman's told the Dyes about Woolford's behavior.

All the while, Williams kept reporting to Rena Dye that Woolford was failing to perform her cashier job up to par. And while Williams may have imagined a poorer performance on Woolford's part than was actually the case, some of her reports to Rena undoubtedly were accurate.

In April (1993) Roger Dye found proof of what looked to him to be theft by Woolford. Again, it involved Woolford's use of the "no sale" button when ringing up small amounts. As Roger put it, from this time on Woolford was "a dis-trusted employee." (Needless to say, I make no finding about whether Woolford in fact did steal anything. My finding is only that Roger and, therefore, Rena believed that Woolford did.)

About this same time (April) Woolford began to avoid performing some of the odds-and-ends types of work (such as cleaning up the area around the cash register) that cashiers were supposed to handle. The pace of her work slowed to subpar levels.

Also about this time there was an increase in the frequency with which Woolford came to work late. By May it got to the point that Woolford was coming in late several times a week. Not infrequently Barkley (the floor manager) would telephone Woolford to find out why she was not at work only to be told that she was still in bed.

Woolford, that is to say, was virtually demanding that Sportsman's fire her. Certainly her employment at Sportsman's was on very thin ice. This was the state of affairs that prevailed at the time that Sportsman's fired Woolford at the end of May 1993.

## II. THE EVENTS OF MAY 27, 28, AND 29, 1993

### A. *Sportsman's Fires Woolford*

I am first going to discuss the events relevant to Woolford's call to the Board and to the Dyes' firing of Woolford that I consider clearly established by the record (often, in fact, undisputed). I will then consider the contentions by Sportsman's about when and why the Dyes decided to fire Woolford.

Thursday, May 27, and Friday, May 28, were days off for Woolford. She was scheduled to work on May 29, starting at 5 a.m.

At 10:55 a.m. on May 27 Woolford telephoned the Board's Regional Office in Baltimore. She told a Board agent that Roger Dye had sexually harassed a number of Sportsman's female employees. (Woolford did not claim that she had been subjected to such behavior.) Additionally, she said, Williams and the Dyes had been spying on the store's employees by means of microphones connected to the anti-theft cameras located throughout the store. The Board agent to whom Woolford spoke indicated that the problems that Woolford described did not seem to be the kind that the

Board handled and suggested several other agencies that Woolford might contact.

Later that day Woolford spoke to several women who had previously worked for Sportsman's and to one current employee, Donna McGee. Woolford told them that she had called the Labor Board and planned to call other governmental entities in order to press sexual harassment charges against Roger Dye. (I make no findings about whether there was any basis to Woolford's charges.)

No later than about 2 p.m. on the following day, May 28, one of the store's regular customers, Jim Heath, told the Dyes that Woolford had called the Labor Board the day before. McGee (an employee) may also have told the Dyes about Woolford's call. (In a statement that Rena Dye sent to the Regional Office on September 13, all that Rena wrote about knowing of Woolford's call to the Board was: "I have not had any factual knowledge of her going to the Labor Board." On the witness stand Rena sought to justify those words by saying that the information about Woolford's call that she got from Heath and, possibly, McGee was second hand and thus did not represent "factual knowledge." But I consider the quoted part of Rena's statement to be an indication of Rena's willingness to shade the truth.)

Some time between early in the morning and midafternoon on May 28, Rena Dye prepared what was obviously meant to be Woolford's last paycheck. That is to say, the record is clear that, no later than mid-afternoon on May 28, the Dyes had decided to fire Woolford.

At 8:45 p.m. on May 28 Barkley called Woolford to say that Woolford was not needed in the store the next day. Although there is no doubt at all that by this time the Dyes had decided to fire her and that Barkley's call to Woolford was a function of that decision, there is a dispute about whether Barkley told Woolford that she had been fired. (Barkley testified that he did; Woolford testified that he did not.) But whether Barkley directly said so or not, Woolford knew that her employment by Sportsman's had ended. Barkley told Woolford that her paycheck was ready and that she should come to the store to pick up the check. (Woolford did immediately go to the store, Barkley handed her the check, and Woolford returned it to him on the ground that it did not include her vacation pay.)

Sometime between 9 and 10 p.m. Woolford called Barkley and asked why she'd been let go. Barkley said that she would have to talk to the Dyes about that but that Woolford had been "causing trouble" and "you don't bite the hand that feeds you."

Woolford then telephoned Rena Dye. There are significant differences in the testimony of Woolford and Rena about what was said during that telephone call. Most importantly, Woolford testified that Rena said, "We hear you've been talking to the Labor Board and if you're that unhappy with your job you can find another one." Rena, on the other hand, testified that while she did mention the Labor Board, it was merely to ask Woolford "why she went to the Labor Board." I am unable to conclude that either witness' testimony about this conversation is more credible than the other's. What I do find is that during that telephone conversation: (1) Rena confirmed that the Dyes no longer wanted Woolford at the store; and (2) Rena mentioned Woolford's call to the Board.

Early the following morning (May 29), Woolford approached the Dyes as they were about to enter the store. Woolford was there to ensure that the Dyes could not later contend that she had failed to show up for a scheduled day's work. Woolford yet again was told that she was not wanted at the store. Roger did the talking this time; Rena said nothing. Additionally, Roger, leaning close to Woolford, said, "You sold me up the river."

#### *B. What Sportsman's Contents About Why the Dyes Fired Woolford on May 28*

The discussion in this part of the decision (II.B) represents a summary of the contentions by Sportsman's, to the extent that those contentions do not conflict with my earlier findings. The discussion in this part should not be taken as findings by me about the facts in this case.

According to Rena Dye's testimony and a written statement Rena sent to the Board's Baltimore office on September 13, 1993, the precipitating factor in the decision to fire Woolford was the departure of another of the store's employees, Kathy Belanga.

Belanga had been a cashier at Sportsman's—a very good cashier—until May 26. She had been off work on May 24 and 25 and was scheduled to work on May 26. But on the morning of May 26 she called Rena Dye to say that she quit, effective immediately. Belanga said that she was quitting because her baby sitter had quit and because she could not get along with one of the store's employees.

In Rena's September 13 statement, Rena wrote that "later that day [the day that Belanga quit] I discovered it was mainly because of Mrs. Woolford that [Belanga] had quit."

On the witness stand, Rena's story was different. Rena did not "discover" anything about the reasons that Belanga had quit. Rather, Rena simply disbelieved the reasons that Belanga gave for why she quit. Rena knew that Woolford and Belanga "chit-chatted" (to use Rena's phrase) a great deal, knew that much of what Woolford had to say to other employees had to do with Sportsman's being a terrible place to work, and concluded that Woolford's conversations with Belanga had been of that ilk. Rena testified that this, in turn, convinced her that Belanga had quit because of the nasty things that Woolford had been saying about Sportsman's and because Woolford had urged Belanga to quit.

On the morning of May 27, Rena called Belanga in an attempt to convince Belanga to return to work at Sportsman's. Belanga refused. Rena testified that it was at that moment that she determined to fire Woolford. Woolford was costing too much in terms of stress and upset for Rena, workplace turmoil, and employee morale to be permitted to work for the store any longer. Rena recognized, she testified, that firing Woolford would mean that Sportsman's would be two cashiers short on the very busy Memorial Day weekend. But she had had it with Woolford and was willing to personally work the shifts of both Woolford and Belanga in order to be rid of the source of such upset.

Rena told Roger of her decision. He agreed that Woolford should be fired. Roger telephoned Woolford's home to give her the news, but Woolford was not there. Rena then told Barkley to call Woolford and tell her that her employment was terminated. Barkley called Woolford's home. Woolford was still not home. But, testified Rena, Barkley left a message on Woolford's answering machine for Woolford to call

the store. Rena testified that she does not know whether Barkley subsequently talked to Woolford that day (May 27).

On the morning of May 28 (Friday), Rena prepared Woolford's paycheck—Woolford's last paycheck. Then, a couple hours later, possibly as late as "noontime," Rena prepared all of the other payroll checks. (Normally Rena does the payroll on Saturdays; but because Rena was going to be working Woolford's shift on Saturday morning, she decided she better take care of it a day early.)

About 2 p.m. Rena came across Heath (the long-time customer) and McGee (an employee) in the store. Heath told Rena that Barkley had told him that Woolford had been fired. Heath then went on to tell Rena that Woolford had contacted the Labor Board. (The record does not tell us how or where Heath learned of Woolford's call to the Board. The likelihood is that McGee told him.) Rena spent a few minutes talking to Heath and McGee, then had to rush out of the store to get ready for her son's graduation that was to take place later that same day.

In sum, Sportsman's argues that as of the end of May 1993, Woolford's performance and behavior had been a serious and worsening problem for months (a position with which I agree, as discussed in part I). Sportsman's then goes on to contend that Belanga's quitting on May 26, which Rena attributed to Woolford, pushed Rena over the edge—Rena was simply unwilling to tolerate having Woolford employed in the store a moment longer. Accordingly, on May 27 Roger Dye and then Barkley called Woolford's home in unsuccessful attempts to tell Woolford that she had been fired. It was a day later, on May 28, that the Dyes first learned that Woolford had contacted the Board. Although Woolford may not have been told that she was fired until after the Dyes had learned about the call to the Board, that is only because Woolford happened not to be home when Roger and Barkley called her on May 27.

### *C. My Findings and Conclusions About Why Sportsman's Fired Woolford*

On July 21, 1993, the Dyes gave an affidavit to a Board agent concerning the events leading to Woolford's being fired. (The affidavit is signed only by Roger. But Rena testified that both she and Roger met with the Board agent and provided the information contained in the affidavit.) That affidavit says nothing whatever about Belanga's quitting. Rather, according to the affidavit, "the final straw" in the Dyes' decision to fire Woolford "was complaints from customers."

I consider that difference between the Rena Dyes' testimony and the Dyes' affidavit to be devastating to the store's position. If Belanga's quitting had in fact been the defining event in Rena's decision to fire Woolford, it is extraordinarily unlikely that the Dyes would have overlooked it when, less than 2 months after that event, they told a Board agent of their reasons for firing Woolford. I conclude, therefore, that the Dyes' firing of Woolford was unrelated to Belanga's quitting. Rather, the likelihood is that Rena Dye falsely testified that there was such a connection in order to provide a lawful reason for the Dyes' termination of Woolford's employment 1 day after Woolford telephoned the Board.

There are three further reasons to reject the contention of Sportsman's about how Woolford came to be fired. They might not alone be enough to lead me to disbelieve Rena that

Belanga's quitting was the event that made up Rena's mind about firing Woolford. But they add to the improbability that Woolford was fired on May 28 for the reason claimed by Sportsman's.

First, Barkley, the first person to indicate to Woolford that she had been discharged, did not talk to her until close to 9 p.m. on May 28. If Rena had decided midday on May 27 to fire Woolford, it is unlikely that the Dyes would have allowed 30 hours or so to pass before communicating that action to Woolford, particularly because Woolford was scheduled to work the shift that began at 5 a.m. on May 29. Sportsman's contends that the store did try to reach Woolford during the day on May 27. But that does not explain the absence of any call to Woolford reasonably early during the day on May 28.

Second, according to Rena, Heath predicated his mention of Woolford's call to the Board by saying that he had heard that Woolford had been fired. But that would have been long before Woolford had heard that she had been fired. For that to have happened, Barkley would have had to have given the news to Heath before he had told it to Woolford. Although that is possible, on the face of it the odds are against it. Yet Sportsman's did not ask either Barkley or Heath about that alleged communication when they were on the witness stand.

Third, when Woolford applied for unemployment compensation, the state agency handling such matters asked Sportsman's to fill out a form stating why Woolford was no longer working there. Rena Dye did so. Sportsman's failed to keep a copy of the form, and neither the General Counsel nor Sportsman's sought to get a copy from the state agency. But the agency's summary of what Sportsman's stated was:

The claimant was discharged or suspended as a disciplinary measure by Dye, Roger . . . because of alleged malicious gossip/slander.

It is the word "slander" that gives one pause. It is unlikely that the agency would have used that term unless it was used by Sportsman's. And while it could be, of course, that Sportsman's was referring to Woolford's complaints about Sportsman's to the store's customers and employees, that would be an unusual way to describe Woolford's behavior.

What about "complaints from customers" about Woolford being the "final straw"—as stated in the Dyes' affidavit? My conclusion is that simply is not so. It was Rena who made the decision to fire Woolford, and she did not testify that such complaints were the immediate reason that she decided to discharge Woolford. Additionally, there is no credible evidence that the store's customers suddenly started complaining about Woolford in the day or two just before May 28, or that customer complaints about Woolford reached a crescendo then. And the Memorial Day weekend is an extraordinarily busy one for Sportsman's. Absent some sudden new information about Woolford, the Dyes would not have chosen the start of that weekend to fire her, particularly in view of the fact that the store was already one cashier short because of Belanga's departure.

I have no doubt that, when Belanga called to say that she was quitting, Rena did assume that Woolford had something to do with it. That meant that as of May 26 Woolford was even closer to getting fired than she already had been. But

my conclusion is that the Dyes did not decide to fire Woolford until May 28. At some point during the morning or early afternoon either Rena or Roger, or both, heard from either Heath or McGee, or both, that Woolford had called the Board to complain about Sportsman's. That was the "final straw." Rena Dye prepared Woolford's last paycheck and then the rest of the payroll. The Dyes told Barkley to call Woolford to say that she was fired and then left for the day in order to, as Rena testified, attend their son's high school graduation.

#### D. Animus

Rena Dye testified that she was not concerned about employees calling the Labor Board. If that were so then, of course, Woolford's call to the Labor Board could not have been the reason that the Dyes fired Woolford.

In that connection Rena testified that, about a month before Woolford was fired, she heard either McGee or Belanga say that Woolford was going to the Labor Board about something. According to Rena, "with all of the problems that had been going on, I didn't think anything of it."

But that testimony conflicts with two other statements by Rena. One was that, according to Rena, she was "very surprised" when Heath told Rena about Woolford's call to the Board. More significantly, recall that when Rena spoke to Woolford on the evening of May 28, she asked why Woolford had gone to the Labor Board. Rena testified that she posed that question because "I hadn't heard anything about the Labor Board before."

I conclude that it is probable that Rena testified falsely when she said that she had previously overheard Woolford referring to the Labor Board.

Of course, an absence of credible evidence that the Dyes were unconcerned about employee calls to the Board does not constitute evidence that the Dyes were concerned about such calls, so much so that they would fire the offending employee. And apart from Woolford's being fired, there is no evidence that the Dyes would respond unfavorably to a call by an employee to the Board. But the timing of an employer's discharge of an employee and false testimony by the employer about the reason for the discharge can constitute evidence of an illicit motive, and I conclude that the circumstances here show that to be the case. See, e.g., *Fiber Products*, 314 NLRB 1169 (1994); *Active Transportation*, 296 NLRB 431, 432 fn. 8 (1989).

#### E. Other Matters

The conclusions that I have expressed above reflect, to some extent, the General Counsel's contentions. But the General Counsel argues that many more facets of the record constitute evidence that Sportsman's fired Woolford because of her call to the Board than I believe to be the case.

1. The General Counsel contends that Barkley held a cookout at his home on the evening of May 27, that McGee and Heath attended, that McGee there told Barkley that Woolford had called the Board, and that Barkley promptly told the Dyes. But the General Counsel failed to show that Barkley held a cookout on May 27 or that, even if there was one, Barkley learned of Woolford's call. In that connection, I credit Barkley that he did not know why the Dyes decided to fire Woolford.

2. As discussed earlier, when Woolford asked Barkley why she was fired, Barkley used the words "causing trouble" and "you don't bite the hand that feeds you." Those words signaled, argues the General Counsel, that Sportsman's fired Woolford because of her call to the Board. But those words are descriptive of Woolford's behavior at Sportsman's. They accordingly add nothing to the General Counsel's case (even apart from the fact that I have found that Barkley did not know why the Dyes fired Woolford).

3. Rena Dye testified that Barkley tried to telephone Woolford on May 27 to tell Woolford that she had been fired, that Woolford was not home, and that Barkley left a message on Woolford's answering machine (asking Woolford to call Barkley). Woolford, however, does not have an answering machine. I am not sure what to make of that discrepancy. If Barkley told Rena that Woolford was not home but that he had left a message, Rena could easily have simply assumed that Barkley had left the message on an answering machine. Thus the mistaken reference to an answering machine might not mean much. On the other hand, I have found that the Dyes did not decide to fire Woolford until May 28. I perforce additionally find that neither the Dyes nor any other agent of Sportsman's called Woolford on May 27 regarding the termination of Woolford's employment.

4. In the Dyes' July 21 affidavit, they state that Woolford's final paycheck was dated May 26. The General Counsel argues that that was a deliberate attempt to mislead. But I credit Rena Dye's testimony that that was an inadvertent mistake.

5. The General Counsel called as witnesses two of the store's most regular customers, Heath and Bill Comegys. Each testified that, prior to Woolford's being fired, he had not said anything to either of the Dyes about Woolford's complaints. I have considered that testimony. But as indicated earlier (in part II,A), I am confident that at least one of the store's regular customers talked to the Dyes about the fact that Woolford frequently and bitterly complained to the store's regular customers about the Dyes.

6. Woolford had been employed by Sportsman's for almost 5 years when the Dyes fired her. Yet: (1) Sportsman's had given Woolford no prior warnings that she was heading toward discharge; (2) Sportsman's gave Woolford no notice whatever—she was scheduled to start work at 5 a.m. on May 29 and was fired, effective immediately, on the evening of May 28. The General Counsel argues, and I initially believed, that both of these circumstances are proof that the Dyes believed that Woolford had done something remarkably reprehensible on or not long before May 28, and that could only be Woolford's call to the Board. But I no longer hold that view. That is because the record shows that the Dyes never, or virtually never, hand out disciplinary warnings and that when they fire employees, they always do so without notice.

7. The Dyes testified that they were certain, or nearly so, that Woolford engaged in petty theft. The record, however, shows that the indications of such theft were ambiguous. The General Counsel argues that that shows that the Dyes' testimony about Woolford taking money that belonged to the store is a lie. But as the discussion in part I of this decision shows, I am convinced that the Dyes honestly believe that Woolford stole money from the store.

8. In September 1993, the Dyes asked Barkley (the floor manager) and Williams (the computer operator) to prepare statements describing Woolford's performance as an employee and the reasons Woolford was fired. The Dyes told Barkley and Williams that the statements would be part of the store's defense in the Board proceeding. But they left Barkley and Williams on their own as to what to say. Moreover the Dyes instructed both Barkley and Williams to seal their statements in envelopes without showing the statements to either of the Dyes. The Dyes, that is, neither instructed Barkley or Williams on what to write nor even read either Barkley's or Williams' statement. As it turned out, Barkley's and Williams' statements varied considerably from the Dyes' testimony about why Woolford was fired. (Neither, for instance, said anything at all about any connection between Belanga's quitting and Woolford's getting fired.) And Barkley's statement varied from his testimony. Most notably, in his statement Barkley wrote that he discussed with Roger Dye Woolford's many deficiencies and "we decided it was in the best interest of the business to let her go." But on the witness stand Barkley testified (credibly) that it was not his place to recommend that an employee be fired, he did not have any such discussion with Roger about Woolford, and the Dyes did not tell him why they decided to fire Woolford.

The General Counsel argues that such inconsistencies are evidence of a coverup. But that does not appear to be the case. In fact the Dyes' willingness to have Barkley and Williams send their unreviewed statements to the Regional Office reinforces my conclusion that the Dyes' testimony about Woolford's deficiencies as an employee should be credited as, in the very least, an honest expression of the Dyes' beliefs on the subject. On the other hand, the Dyes knew that neither Barkley nor Williams had any information at all about why the Dyes chose to fire Woolford when they did—at the start of the Memorial Day weekend. Thus the Dyes' request to Barkley and Williams indicates nothing about the veracity of the Dyes' testimony on that subject.

### III. CONCLUSION

It may well be that, notwithstanding Woolford's telephone call to the Board's Baltimore office, Sportsman's would not have fired Woolford on May 28 if Woolford's performance and behavior as a cashier had been satisfactory. And, certainly, Woolford was in any case perilously close to being fired for lawful reasons. But Sportsman's failed to prove that it would have fired Woolford on May 28 absent her call to the Board. See, in this connection, *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). In fact the record affirmatively shows that Sportsman's would not have fired Woolford that Memorial Day weekend but for her call to the Board. Sportsman's accordingly violated Section 8(a)(1) and (4) and the Act. *NLRB v. AA Electric Co.*, 405 U.S. 117 (1972). Cf. *Sea-Land Service*, 280 NLRB 720 (1986), enf. denied 837 F.2d 1387 (5th Cir. 1988).

### IV. REMEDY

It is unlikely that Sportsman's would have retained Woolford as an employee much longer even had Sportsman's not learned of her call to the Board. But nothing in the

record proves just when Sportsman's would have fired Woolford absent that call to the Board. Accordingly, since I have concluded that Sportsman's fired Woolford for reasons that violated the Act, I see no alternative but to recommend that Sportsman's be required to reinstate Woolford and make her whole for any loss of earnings and other benefits she suffered as a result of that unfair labor practice from May 28, 1993, to the date of a proper offer of reinstatement. Loss of earnings and benefits shall be computed on a quarterly basis, less any interim net earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

### ORDER

The Respondent, Sportsman's Service Center, Chester, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging any employee for contacting the National Labor Relations Board.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Sherry Woolford immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudicial privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and notify Sherry Woolford in writing that this has been done and that the discharge will not be used against her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its store in Chester, Maryland, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by a representative of Sportsman's, shall be posted by Sportsman's immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Sportsman's to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Sportsman's has taken to comply.

<sup>2</sup>If no exceptions are filed as provided by Sec. 102.46 of the Boards Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge you for contacting the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Sherry Woolford immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL notify Sherry Woolford that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

SPORTSMAN'S SERVICE CENTER